

**BUFFALO FISCAL STABILITY AUTHORITY  
GUIDELINES REGARDING THE USE, AWARDING, MONITORING AND REPORTING  
OF PROCUREMENT CONTRACTS**

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ARTICLE I

STATEMENT OF PURPOSE

101. The Buffalo Fiscal Stability Authority Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts (Guidelines) are adopted pursuant to the provisions of the Act, as defined below, and Section 2879 of the New York State Public Authorities Law, Section 104-b(2)(f) of New York State General Municipal Law, and Articles 15-A and 17-B of the New York Executive Law and its implementing regulations, and shall be reviewed and approved by a quorum of the Buffalo Fiscal Stability Authority's Board of Directors at least annually.

102. The primary purposes of these Guidelines are to assure the prudent and economical use of public monies in the best interests of the taxpayers and to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost.

ARTICLE II

DEFINITION OF TERMS

201. Definitions: The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

“Act” shall mean Chapter 122 of the Laws of New York, 2003, as amended or supplemented.

“Authority” or “BFSA” shall mean the Buffalo Fiscal Stability Authority, as a state agency.

“Officer” shall mean any person so designated by the Directors of the Authority.

“Procurement Contract” or “Contract” means any written agreement of the Authority for the acquisition of goods or services of any kind in the actual or estimated amount of \$25,000, or more.

ARTICLE III

TYPES OF SERVICES FOR PROCUREMENT

301. The areas of responsibility and oversight requiring Procurement Contracts for personal services include, but are not limited to, the performance of legal, accounting, management consulting, investment, banking, planning, training, statistical, research, public relations, architectural, engineering, construction, surveying, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not

providing such services as officers or employees of the Buffalo Fiscal Stability Authority (“Personal Service(s)”).

302. The reasons for use of Procurement Contracts for Personal Services include, but are not limited to:
- a. Requirements of special expertise or unusual qualifications;
  - b. Nature, magnitude, or complexity of services required;
  - c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
  - d. Lower cost;
  - e. Short-term need for the services;
  - f. Infrequent need for the services;
  - g. Distance of the location or locations where the services must be performed from the Authority’s office or facilities.

303. Procurement Contracts for Goods

The types of goods requiring Procurement Contracts include:

- a. Goods needed in order to proceed with a project of BFSA;
- b. Goods needed in order to support the administrative needs of BFSA.

## ARTICLE IV

### SELECTION OF PERSONAL SERVICE CONTRACTORS

400. Selection Criteria

Except as specifically waived in accordance with the provisions of these Guidelines, the Act, or New York State law, rules or regulations, Procurement Contracts shall be awarded as follows:

1. General Policy

Procurement Contracts are to be awarded to persons/firms on a competitive basis to the maximum extent possible.

- a. Such awards are to be made after notice is published in the New York State Contract Reporter and after the solicitation of proposals obtained from at least three qualified persons/firms where possible.
- b. Such Buffalo Fiscal Stability Authority (“BFSA” or “Authority”) requests for proposals shall be preceded, where possible, by the preparation of reasonable cost estimates for such Procurement Contracts. Such cost estimates shall be the responsibility of the BFSA staff members initiating such requests for proposals.
- c. All proposals should be received at one designated location within the initiating department, and immediately should be stamped with the date and time of receipt.

- d. When appropriate, written selection criteria shall be prepared for each Procurement Contract, which shall include price as an important factor to be considered in the selection process. Analysis of the proposals and/or bids submitted and the award of the Contract shall be documented in reasonable detail. Awards to other than the low bidder shall include in such documentation the reason the low bidder was not selected.
- e. The initiator shall ensure that documentation related to proposals and/or bids and awards are maintained for not less than two years after completion of the services contracted for.

#### 401. Determination Required as to Competitive Bidding

Prior to commencing any procurement of goods and services, the Executive Director or BFSB Board (the "Board") approved authorized designee shall prepare a written statement in the forms attached hereto as "Exhibit A" [Procurement Form 1] and/or "Exhibit B" [Procurement Form 2], setting forth the basis for:

- a. the determination that competitive bidding is not required for such procurement and, if applicable that;
- b. the determination that such procurement is subject to the appropriate requirements set forth in this policy. Such written statements shall be maintained by the Executive Director or Board approved authorized designee in a specially designated procurement file.

Prior to the final bid award for a contract or work the cost of which exceeds \$25,000, the Board shall approve or ratify such bid.

#### 402. Documentation

- a. Each purchase made by the Executive Director or Board approved authorized designee shall set forth in writing the category of procurement that is being made and what method of procurement is specified.
- b. The basis for any determination that competitive bidding is not required shall be documented, in writing, by the Executive Director or Board approved authorized designee, on the forms annexed hereto, and filed with the purchase order or contract therefore [See "Exhibit A," Procurement Form 1].
- c. For those items not subject to competitive bidding as determined under Section 402 such as: professional services, emergency situations, goods or services purchased under city contracts, or procurements from sole sources, documentation should include a memorandum to the file which details the reasons why the procurement is not subject to competitive bidding and include, as applicable [See "Exhibit B," Procurement Form 2]:
  - (i) a description of the facts giving rise to the emergency and that they meet the statutory criteria; or
  - (ii) a description of the professional services; or
  - (iii) written verification of City contracts; or
  - (iv) opinions of Counsel, if any; or
  - (v) a description of sole source items and how such determinations were made.

- d. Whenever an award is made to other than the lowest cost bidder, qualified responder or vendor, the reasons for such award shall be set forth in writing and maintained in the procurement file.
- e. Whenever the specified number of quotations cannot or will not be secured, the reasons for that situation shall be indicated in writing and maintained in the procurement file.
- f. The Executive Director or Board approved authorized designee may utilize the appropriate forms attached as "Exhibit A" and "Exhibit B" hereto as the required documentation hereunder, related to procurement opportunities and awards.

#### 403. Advertisement Requirements

The solicitation of bids, proposals or submissions of qualification data for Personal Service contracts shall be made by the Authority in a manner determined by an authorized Officer of the Authority to be the most cost effective for providing reasonable competition for the Authority's Personal Service contracts while also promoting State business enterprises where possible, practical, feasible and consistent with open bidding. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these Guidelines and as directed in Section 2879 of the New York State Public Authorities Law. Notice of Procurement Contracts opportunities must also be advertised in the New York State Contract Reporter.

#### 404. Term

All contracts for Personal Services shall be limited to a maximum of one year unless the Authority Directors by resolution determine that a longer period for a particular contract is in the best interest of the Authority.

#### 405. Waiver of or Exclusion from Selection Criteria

Procurement Contracts may be awarded without notice being published in the New York State Contract Reporter to persons/firms on a sole source or single source basis only on the written approval of the Executive Director or the Directors of BFSa.

Procurement Contracts may be awarded for professional services or services requiring special or technical skills, training or expertise, e.g., accounting or legal services, without the solicitation of alternative proposals, competitive bidding or quotations, if determined by the Board to be in the best interest of the Authority.

That approval will only be granted where the initiator can demonstrate:

- a. Emergency or other extraordinary circumstances exist which make competition impracticable or inappropriate; or
- b. Only one source for the goods or services is available; or
- c. Specialized services are required for which a certain person/firm's expertise is unique or such person/firm has greatly superior qualifications to perform the services at a cost that is determined to be fair and reasonable, or
- d. Specialized or professional services require substantial formal training as a prerequisite to performing the service, or

- e. Services are subject to State licensing or testing requirements.

These qualifications and the concerns of the Authority regarding its liability and the liability of the Board are not necessarily found or addressed in the individual, company or firm that may offer the lowest price and the nature of these services are such that they do not readily lend themselves to the multiple source solicitation or competitive bidding process.

The initiator shall ensure that documentation related to the reason for awarding the contract on a sole source or single source basis, or without having been competitively bid and for not publishing notice in the New York State Contract Reporter, is maintained for not less than two years after completion of the services. [See Section 402 and forms at Exhibit A and B]

#### 406. Approval Process

The BFSA Directors shall approve the award of all Procurement Contracts for Personal Services, regardless of the amount of said contract.

### ARTICLE V

#### SELECTION OF VENDORS AND SUPPLIERS FOR THE PURCHASE OF GOODS

501. Except as provided by the Act or by New York State law, rules or regulations, in the procurement of furniture, equipment, supplies and other goods for the Authority, the Authority shall perform the following tasks:

- a. Establish a realistic furniture, equipment and supplies budget;
- b. Place advertisements for goods and service in the same manner as described in 401 of these Guidelines;
- c. Perform a comparative pricing and cost analysis for each item needed, including prices of those items, which are available through the State Office of General Service contracts;
- d. Prepare contracts and/or purchase orders for the acquisition of all commodities. Use of State contracts is preferable when the items are available at lower costs;
- e. Monitor vendors for quality control and timely deliveries;
- f. Verify the quantities received and the quality of the products in light of the specifications, and monitor the vendor invoices for timely payments;
- g. If the estimated cost of the goods exceeds \$25,000 or more, a competitive bidding procedure will be followed.

### ARTICLE VI

#### MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

601. In accordance with Article 15-A of the Executive Law and the implementing regulations, the Authority shall, in order to promote the use of minority and women-owned business enterprises (MWBs) in Procurement Contracts, solicit offers from minority and women-owned business enterprises known to have experience in the area of the goods or service to be provided, all in accordance with the BFS Act and State and Federal laws and regulations.

602. The Authority desires to increase participation by MWBEs, certified or otherwise qualified under Article 15-A, so as to facilitate the award of a fair share of such contracts to those entities.

603. For purposes of compliance with the above, the following definitions are used with respect to minority and women-owned business enterprises:

A “women-owned business enterprise” shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- a. at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
- b. an enterprise in which the ownership interest of such women is real, substantial and continuing;
- c. an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
- d. an enterprise authorized to do business in this state and independently owned and operated;
- e. an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars as adjusted annually on the first of January for inflation according to the consumer price index of the previous year;
- f. an enterprise that is a “small business” defined as a business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR Part 121 and any amendments thereto.

A “minority-owned business enterprise” shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- a. at least fifty-one percent owned by one or more minority group members;
- b. an enterprise in which such minority ownership is real, substantial and continuing;
- c. an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
- d. an enterprise authorized to do business in this state and independently owned and operated;
- e. an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year;

- f. an enterprise that is a “small business” defined as a business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR Part 121 and any amendments thereto.

Furthermore, a "minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- a. Black persons having origins in any of the Black African racial groups;
- b. Hispanic/Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
- c. Native American or Alaskan native persons having origins in any of the original peoples of North America;
- d. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

604. The BFSa will support the procurement of goods and services from qualified MWBE entities to the extent such is feasible and practicable, and in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

605. The BFSa shall annually submit procurement goals as required under the provisions of Article 15-A.

606. The Executive Director shall serve as the senior staff member who is responsible for the oversight of the BFSa’s MWBE program.

## ARTICLE VII

### SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE PROGRAM PARTICIPATION

701. In accordance with Article 17-B of the Executive Law and the implementing regulations, the Authority shall, in order to promote the use of service-disabled veteran-owned business (“SDVOB”) enterprises in Procurement Contracts, solicit offers from SDVOB enterprises known to have experience in the area of the goods or service to be provided, all in accordance with the BFSa Act and State and Federal laws and regulations.

702. The Authority desires to increase participation by SDVOB enterprises so as to facilitate the award of a fair share of such contracts to those entities.

703. For purposes of compliance with the above, the following definitions are used with respect to service-disabled veteran-owned business enterprise program participation:

- a. “service-disabled veteran-owned business enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, limited liability partnership, limited liability company or corporation, including not-for-profit corporations, which is authorized to and engages in lawful business transactions in accordance with New York law, and is:
  - (i) at least fifty-one percent owned by one or more service-disabled veterans;
  - (ii) an enterprise in which such service-disabled veteran ownership is real, substantial, and continuing;
  - (iii) an enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
  - (iv) an enterprise authorized to do business in this State and is independently-owned and operated;
  - (v) an enterprise that is a small business; and
  - (vi) certified by the Office of General Services.
- b. “state contract” shall mean:
  - (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, commodities, supplies, equipment, materials, technology or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency;
  - (ii) a written agreement in excess of \$100,000 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and
  - (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

704. The BFSa will support the procurement of goods and services from qualified SDVOB enterprises to the extent such is feasible and practicable, and in accordance with Article 17-B of the Executive Law and the regulations promulgated thereunder.

705. The BFSa shall annually submit procurement goals as required under the provisions of Article 17-B.

706. The Executive Director shall serve as the senior staff member who is responsible for the oversight of the BFSa’s SDVOB enterprise program.



## ARTICLE VIII

### DISCRETIONARY BUYING THRESHOLDS

801. Pursuant to guidelines established by the State procurement council, the Authority may purchase services or commodities from small business concerns or those certified pursuant to Articles 15-A and 17-B of New York State Executive Law, or commodities or technology that are recycled or remanufactured, or commodities that are food, including milk and milk products, grown, produced or harvested in New York State in an amount not exceeding \$500,000 without a formal competitive process. The Authority shall comply with the provisions for New York State State Finance Law Section 163(6) with respect to discretionary buying.

## ARTICLE IX

### POLICIES TO PROMOTE THE PARTICIPATION BY NEW YORK BUSINESS ENTERPRISES AND NEW YORK STATE RESIDENTS IN PROCUREMENT CONTRACTS

901. The Authority shall comply with the Act and the State Omnibus Procurement Law when applicable.

## ARTICLE X

### PROVISIONS MADE A PART OF SERVICE CONTRACTS

1001. Provisions to be contained in Personal Service contracts shall include but not be limited to:

- a. Scope of services;
- b. Contract price or fee structure;
- c. Method or basis of payment;
- d. Use of the Authority's supplies;
- e. Use of the Authority's personnel;
- f. Term of the contract;
- g. The Authority's Schedule A, "Conditions Applicable to BFSAs Agreements with Law Firms and Other Consultants" which Schedule is made a part of these Guidelines.

## ARTICLE XI

### PROCUREMENT CONTRACTS WITH FORMER OFFICERS OR EMPLOYEES OF THE AUTHORITY

1101. The Authority may not enter into Procurement Contracts with former Officers or employees of the Authority or former employees of New York State, who provided services to the Authority, where such Contracts would be in contravention of law, would create a conflict of interest or may create the appearance of impropriety.

## ARTICLE XII

### REPORTS TO THE DIRECTORS CONCERNING PROCUREMENT CONTRACTS

1201. The Authority shall annually prepare for approval by the Directors and public availability a report on Procurement Contracts as of the end of each fiscal year summarizing procurement activity by the Authority for the period of the report, including a listing of all Contracts entered into, the selection process used to select such Contractors and the status of existing Procurement Contracts. BFSAs Executive Director shall also prepare, on an annual basis, a report for submission to:

- a. The New York State (NYS) Division of Budget;
- b. The NYS Department of Audit and Control;
- c. The NYS Senate Finance Committee;
- d. The NYS Assembly Ways and Means Committee;
- e. The NYS Department of Economic Development; and
- f. Members of the public (upon receipt of reasonable requests therefore), which shall include the Guidelines, amendments thereto, and an explanation thereof.

## ARTICLE XIII

### ANNUAL REVIEW AND APPROVAL OF GUIDELINES

1301. The BFSAs Directors shall annually review and approve these Guidelines.

## ARTICLE XIV

### AMENDMENT OF GUIDELINES

1401. The Authority may, from time to time, amend by resolution these Guidelines.

## ARTICLE XV

### EFFECT OF NONCOMPLIANCE WITH GUIDELINES

1501. Failure by the Authority to comply with provisions of these Guidelines shall not be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement for the procurement of goods or services.

Attachments: Schedule A  
Exhibit A  
Exhibit B  
Exhibit C

Reaffirmed:  
September 21, 2022

## **SCHEDULE A**

### **CONDITIONS APPLICABLE TO BFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS (COLLECTIVELY, "CONSULTANT")**

#### **"BFSA" IS THE BUFFALO FISCAL STABILITY AUTHORITY**

### **ARTICLE I**

#### **RELATION OF CONSULTANT TO BFSA**

**1.1 SUPERVISION BY BFSA.** The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of BFSA provided that neither BFSA's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act pursuant to this Agreement.

**1.2 CONSULTANT'S PERSONNEL.** The Consultant shall designate in writing to BFSA one individual, satisfactory to BFSA, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be BFSA's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon BFSA's written request.

**1.3 APPROVAL OF SUBCONSULTANTS.** The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of BFSA. The Consultant shall inform BFSA in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.

**1.4 CONSULTANT AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of BFSA. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of BFSA.

**1.5 CONFLICT-OF-INTEREST.** The Consultant represents that:

- a. The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.
- b. No officer, employee, agent or director of BFSA, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise here from.

- c. No officer, employee, agent or director of BFSA, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of BFSA, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

## **ARTICLE II**

### **DOCUMENTS AND RECORDS**

**2.1     MAINTENANCE OF RECORDS.** The Consultant shall, until three years after completion of its services hereunder or termination of this Agreement by BFSA, maintain and shall require each Subconsultant to maintain (a) complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make such books and records available to BFSA or its authorized representatives for review and audit at all such reasonable times as BFSA shall from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

**2.2     OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of BFSA, and BFSA shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty, charge or other compensation to Consultant. Upon request of BFSA during any stage of the work, Consultant shall deliver all such material to BFSA.

The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of BFSA, except that Consultant may retain copies of such reports and other documents for general reference use.

## **ARTICLE III**

### **TERMINATION**

**3.1 OPTIONAL TERMINATION BY BFSA.** BFSA at any time, in its sole discretion, may terminate this Agreement, postpone or delay all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement, or delay, BFSA shall pay the Consultant for reasonable professional time and out-of-pocket expenses incurred by the Consultant to the date notice of such action is received by the Consultant. The Consultant agrees to cause any agreement or contract entered into by the Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provision of this Section 3.1.

## **ARTICLE IV**

### **PROVISIONS REQUIRED BY LAW**

**4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS.** The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

**4.2 CONSULTANT TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by BFSA, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by BFSA or the Consultant in connection with this Agreement.

**4.3 NON-DISCRIMINATION.** The Consultant during the performance of this Agreement, specifically agrees that the Consultant will not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, domestic violence status or any other status protected by law.

**4.4 NO ASSIGNMENT WITHOUT CONSENT.** The Consultant agrees that:

- a. It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of BFSA.
- b. If the prohibition of Section 4.4(a) is violated, BFSA may revoke and annul this Agreement and BFSA shall be relieved from any and all liability and obligations there under to the Consultant and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Consultant and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

## ARTICLE V

### **OTHER STANDARD PROVISIONS**

**5.1 GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

**5.2 ENTIRE AGREEMENT/AMENDMENT.** This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

**5.3 CONFIDENTIALITY.** Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and BFSA and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from BFSA, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as BFSA may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

**5.4 INDEMNIFICATION.** Notwithstanding anything to the contrary contained herein, Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Subconsultants, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to this Agreement. Consultant agrees to defend, indemnify and hold the indemnitees (the State of New York and BFSA) harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage to property, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Subconsultants, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the indemnities by reason of claims against Consultant or its Subconsultants, or their employees, agents, servants, independent contractors and subcontracts for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the indemnities for reasonable attorneys' fees incurred in connection with the above. Consultant

shall be solely responsible for the safety and protection of all its Subconsultants, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Subconsultants, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Subconsultants, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

**5.5 MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

## **ARTICLE VI**

### **BILLING POLICY**

**6.1 INVOICES.** The Consultant is required to submit detailed documentation in support of Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

Accounts Payable Department  
Buffalo Fiscal Stability Authority

Invoices shall be made on the Consultant's own invoice forms or letterhead and must include BFSA's contract and project numbers, if any. Consultant shall also include federal identification number with the first invoice, and a list of each individual who is expected regularly to bill time to this matter, his/her title and hourly billing rate. Invoices shall be in the form attached to this Schedule A. Time shall be billed on 1/10<sup>th</sup> of an hour basis.

**6.2 REIMBURSABLE EXPENSES.** The Consultant's monthly invoices should present out-of-pocket expenses on a daily, itemized basis, grouped by general category. The Consultant must submit supporting documentation for each individual expense item over \$250. Out-of-pocket expenses will be reimbursed only in accordance with the attached **SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR BFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS**.

**6.3 NON-REIMBURSABLES.**

The following will not be reimbursed:

- a. Flight insurance;
- b. Valet Services (except five or more consecutive days)
- c. Personal expenses of any type
- d. Expenses paid for BFSA employees
- e. Travel to any BFSA office to "deliver vouchers or pick up check".

#### **6.4     NO REIMBURSEMENT FOR SALES TAX CHARGES**

BFSA is a public benefit corporation and as such is exempt from all sales and use taxes in New York State. BFSA will not reimburse the Consultant for sales or use taxes over \$10.00 incurred in connection with the contract. If the Consultant will make purchases of goods or services that involve sales or use taxes in excess of that amount, the Consultant must, in advance of making such purchases, obtain a sales tax certification from BFSA so that no such taxes are incurred.

#### **6.5     GENERAL**

- a. All receipts must be legible. Illegible receipts will not be reimbursed.
- b. Whenever possible original receipts should be presented for reimbursement.

At any time or times until three years after completion of Consultant's services or earlier termination of this Agreement by BFSA, BFSA may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher, which are found by BFSA on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.



**Attachment to Schedule A**

**[CONSULTANT LETTERHEAD]**

Date
Bill #
BFSA Contract #

**To: Buffalo Fiscal Stability Authority**

**Attention: Comptroller**

**FOR PROFESSIONAL FEES**

<u>Date</u>	<u>Hours*</u>	<u>Fees**</u>	<u>Description of Services</u>

\* Billing on 1/10th of an hour.

\*\* # of hours x the applicable rate.

**CHARGES AND DISBURSEMENTS (grouped by category):**

<u>Date</u>	<u>Description</u>	<u>Amount</u>
		\$
	<b>TOTAL CHARGES AND DISBURSEMENTS</b>	<b>\$</b>

<b>TOTAL FOR FEES AND CHARGES AND DISBURSEMENTS</b>	<b>\$</b>
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Certified as true and correct \_\_\_\_\_  
Vendor/Title

**BFSA internal approval** \_\_\_\_\_  
Name
Title
Date

**SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR BFS  
AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS**

Consultant will be reimbursed for the following types of expenses at the following maximum rates. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred:

<b><u>TYPE OF EXPENSE</u></b>	<b><u>RATE OF REIMBURSEMENT</u></b>
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to \$35/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to \$65; amounts over \$65 must be submitted for approval on a case-by-case basis. Mileage reimbursement for private cars is to be reimbursed at the applicable IRS rate.
Meal Charges	Actual cost of evening or overtime meals in the office up to \$25 and reasonable cost of outside catering service for meetings. No reimbursements for breakfast or lunch.
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
Photocopying	Firm's standard rate, up to \$.25/page; actual cost if outsourced.

Fax Transmission	None for incoming faxes; Firm's standard rate, up to \$1.00/page for outgoing faxes
Computer Research	Actual cost (no overhead) and only as needed and deemed cost effective.
Out-of-Town Travel	Reasonable expenses, to be submitted for approval, in-advance, on a case-by-case basis.
Postage and Overnight Mail	None for individual letters; FedEx and other special delivery services will be reimbursed at actual cost
Messenger Service	Actual cost up to \$15.

**EXHIBIT "A"**  
**Determinations for Non-competitive Bidding**  
**Procurement Documentation Form 1**

**Exhibit A**  
**Buffalo Fiscal Stability Authority**  
**Procurement Determinations for Non-competitive Bidding**

<b>Buffalo Fiscal Stability Authority</b> <b>[Procurement form 1]</b>	
<b>Contract No.</b>	
<b>Location of Project</b>	
<b>Publicly Owned</b>	
<b>Private Owned:</b>	
<b><u>Bids Submitted to:</u></b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Statement of Contract requirements for purchase of goods</b>	
<b><u>Contact Person:</u></b>	

<b>Contract Amount Based on \$15K: Greater than \$20K</b>	
<b>Less than \$20K</b>	
<b>Determination as to nature of Project</b>	
<b>Public – Bid Required</b>	
<b>Non-Competitive – Solicitation</b>	
<b>Rationale for Determination for Public or Non-Competitive Bidding</b>	

**EXHIBIT "B"**  
**Determinations for M/WBE, Professional Services,  
Emergencies, Sole Sources and City Contracts**

**Procurement Documentation Form 2**

**Exhibit B**

**Buffalo Fiscal Stability Authority**  
**Procurement Documentation for Professional Services, Sole Sources**  
**and City Contracts**

<b>Buffalo Fiscal Stability Authority</b> <b>[Procurement Form 2]</b>	
<b>M/WBE Required</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Professional Services</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Sole Source</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Emergencies/City Contracts</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Professional Services Statement</b>	



<b>Sole Sources Statement</b>	
<b>Emergencies/City Contracts Statement</b>	

**EXHIBIT "C"**  
**DETERMINATIONS FOR SDVOB ENTERPRISE**  
**PROCUREMENT DOCUMENTATION FORM 3**

**Exhibit C**

**Buffalo Fiscal Stability Authority**  
**Procurement Documentation for Professional Services, Sole**  
**Sources and City Contracts**

Procurement Form 3		
<b>SDVOB REQUIRED</b>	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>PROFESSIONAL SERVICES</b>	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>SOLE SOURCE</b>	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>EMERGENCIES/ CITY CONTRACTS</b>	<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>PROFESSIONAL SERVICES STATEMENT</b>		
<b>SOLE SOURCES STATEMENT</b>		
<b>EMERGENCIES/ CITY CONTRACTS STATEMENT</b>		